

CORRIGENDUM

Corrigendum to Notification under Section 4 for the work of construction of a road from Mustafabad Gailana road to village Mohamadpur via Jamelpur in Kurukshetra District as published, —*vide* notification No. SE/Karnal/PWD/B & R/Branch/632/R, dated 6th February, 1980 on the Haryana Government Gazette on February 19, 1980 at page 237-238.

The name of village of "Birbalsta" HB 177 appearing under Heading Locality/Village and Hadbast No. may be read as "Birbalsua" H. B. No. 177.

(Sd.) . . .

Superintending Engineer,
Ambala Circle, P. W. D. B & R Branch,
Ambala Cantt.

LABOUR DEPARTMENT

The 14th May, 1980

No. 11(112)-80-3Lab./6792.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Shree Industries, Plot No. 102, Sector 6, Faridabad.

**BEFORE SHRI I. P. CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD**

Reference No. 216 of 1977

between

**WORKMEN OF M/S. SHREE INDUSTRIES, PLOT NO. 102, SECTOR-6, FARIDABAD
... WORKMEN/PETITIONERS**

versus

**M/S. SHREE INDUSTRIES, PLOT NO. 102, SECTOR-6, FARIDABAD ... MANAGEMENT/
RESPONDENT**

Present. :

Shri S.R. Gupta, for the workmen.

Shri M.P. Gupta, for the Management.

AWARD

This reference No. 216 of 1977 has been referred to this court by the Hon'ble Governor of Haryana, —*vide* order No. ID/FD/421-77/50345, dated the 7th December, 1977 under section 10(I)(d) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between the workmen of M/s. Shree Industries, Faridabad and the Management. The terms of reference are given below :—

1. Whether the workmen should be properly designated, if so, with what details ?
2. Whether the grades and scales of pay of the workmen should be fixed, if so, with what details ?
3. Whether the workmen are entitled to the grant of dearness allowance, if so, with what details ?
4. Whether the workmen are entitled to grant of bonus for the years 1970-71, 1971-72, 1972-73, 1973-74, if so, with what details ?
5. Whether the workmen are entitled to any residential accommodation or an allowance in lieu thereof, if so with what details ?
6. Whether the workmen should be supplied with uniforms, if so, with what details ?

After receipt of this reference usual notices were issued to the parties. The parties appeared, filed their pleadings and on the basis of pleadings of the parties following issues were framed by my Learned Predecessor Shri Nathu Ram Sharma :—

1. Whether the workmen are estopped from claiming bonus as claimed by them by their conduct ? OPM.
2. Whether there is a relinquishment of demand relating to bonus on the part of workmen ? OPM.
3. Whether the factory was established in the year 1970, if so, to what effect relating to the demand for bonus ? OPM.
4. Whether the demands are espoused by a substantial number of workmen ? OPM.
5. Whether the workmen should be properly designated, if so, what details ?
6. Whether the Grades and Scales of pay of workmen should be fixed, if so with what details ?
7. Whether the workmen are entitled to the grant of deafness allowance, if so, with what details ?
8. Whether the workmen are entitled to the grant of bonus for the years 1970-71, 1971-72, 1972-73, and 1973-74, if so, with what details ?
9. Whether the workmen are entitled to any residential accommodation or any allowance in lieu thereof, if so with what details ?
10. Whether the workmen should be supplied with uniforms, if so, with what details ?

The parties adduced their evidence in order to prove their case. I have gone through the file and heard the arguments of the parties at length and my findings on issue wise are given below. All the issues are having effect of issue No. 3, therefore, Issue No. 3 is decided at the first instance :—

Issue No. 3.—The management has stated in their written statement in preliminary objection No. 4 that the factory was established in the year 1970 but this contention of the Management was denied by the workmen in the replication. The management in order to prove their contention that the factory was established in the year, 1970 produced Shri C.R. Kothari (MW 3) who has deposed that factory started in the year 1970 and no cross-examination was put by the learned representative of the workmen on this aspects. Therefore, the statement of Shri C.R. Kothari MW 3 goes unrebuted on this point. Shri Uttam Chand, WW 1 witness of workmen and one of the signatories in the demand notice and claim statement, has also admitted in examination in chief that the factory was started in the year 1970. The management further produced a letter Exhibit MA, which is the letter of renewal of factory licence for the year, 1971. In this letter, it is mentioned renewal of the factory Registration No. GGN-87/16137 under S. No. 532, dated 7th August, 1970. This letter clearly shows that factory was started before 7th August, 1970 as the date of licence of the factory is 7th August, 1970 but exact date of start of the factory has not been proved on the file, it is proved that the factory was started in the year, 1970. On the basis of evidence. It is, therefore, held that the factory was started in the year 1970 and in the absence of the exact date of its start, over and above this the representative of the workmen has not stressed this point seriously. I hold that the factory was started from 1st January, 1970. There is no chance for the start of the factory before that date.

Issue Nos. 1, 2 and 8.—These issues are inter connected and correlated. Therefore these issues are decided jointly being on bonus.

Issue No. 8 is relating to the grant of bonus for the years 1970-71, 1971-72, 1972-73 and 1973-74. The workmen in their claim statement have demanded that bonus for these four years should be paid at 20% along-with the interest at 12% per annum. The management in reply to the written statement submitted that bonus for the years 1971-72, 1972-73, 1973-74 have been paid but bonus for the year 1970-71 is not payable. This fact of payment of bonus for the years 1971-72, 1972-73 & 1973-74 is also admitted by the witness of the workmen Shri Utam Chand WW 1 in his statement, as well as by the witnesses of management Shri C.R. Kotharia (MW 4) and Shri S.P. Parmar MW 3. Shri S.R. Gupta, representative of the workmen has also admitted this fact at the bar that the Payment of Bonus for the year 1971-72, 1972-73, 1973-74 has been made by the management but the payment so made is not adequate and the workmen are not satisfied with the rate of bonus paid by the management. The management produced copies of bonus Payment Register Ex. MW 3/1 to MW 3/15, which clearly shows that the management has certainly paid bonus for the years 1971-72, 1972-73, 1973-74. The workmen in their statement have no where mentioned that the payment of bonus for these years was made by the management and they are not satisfied with it. The reference

was also not made in this way and simply the reference was made "whether the workmen are entitled for grant of bonus" which means that the workmen are not paid bonus at all. Since the payment of the bonus for the years 1971-72, 1972-73, 1973-74 stands proved on the file, therefore, the question for grant of bonus for these years does not arise. In case the workmen were not satisfied with the payment of bonus so made, they should have approached the Government in a better way by raising the dispute that the workmen be paid bonus at enhanced rate as they were not satisfied with the rate of bonus paid by the management. Since the reference is only whether the workmen are entitled for grant of bonus for the years 1970-71, 1971-72 1972-73 & 1973-74, therefore, this Court can not decide this question whether the workmen are entitled for bonus at the rate higher than the rate already paid. In this connection, the representative of the workmen has relied upon R.L.R. 1979 Page 144. But this authority does not help him as the facts stated in that authority were different from the present case. In the case cited by him the question of fair wage structure was involved so naturally gravity was also held to be a part of fair wage whereas in the instant case the question is of grant of bonus which the management has admittedly paid. Therefore, I cannot decide the rate of bonus. Even if, the question for payment of bonus at the rate higher than rate paid is decided, there is no evidence of the workmen on the file. Even the claim statement does not state, at what rate the bonus has been paid. The workmen has not produced any documentary evidence. The workmen have only produced Shri Uttam Chand WW 1, who has simply stated that they are not satisfied with the bonus paid by the management. Merely the statement of Uttam Chand WW 1 cannot help the workmen. So far as the question for payment of bonus for the year 1970-71 is concerned, the management has stated in their written statement that factory was started in the year 1970. (Same is also held by me under issue No. 3.) As there was no profit in this year, therefore, the Bonus Act is not applicable in view of Section 16 of that Act. This contention of the management is not rebutted by the workmen in any way. In case, the workmen wished to claim the bonus for this year the burdern of proof for this issue was heavy on the workmen that the management had allocable surpluses, but the workmen have not lead any evidence in this regard. During the course of arguments on behalf of the management, it was pointed out that the burden of proof of this issue was on the workmen in view of the judgement reported in A.I.R. 1957 Cal. Page 300 but the workmen failed to prove it, hence they are not entitled for any bonus. In reply to the argument of Management, representative of the workmen submitted that it was the duty of the management to prove that there was no profit during the year 1970-71 but because the management did not produce the copy of balance sheet, therefore the workmen are entitled for bonus for this year and inference may be drawn against the management. It is admitted on the file that the management has not produced balance sheet for the year 1970. Considering the basic principle of burden of proof, I am of the view that it was for both the parties to prove their contention. Since the management has also not produced the copy of the balance sheet, therefore, I hold that the workmen are entitled for grant of bonus for the year 1970-71 and the management should pay the same for the year 1970-71 to all the workmen entitle for bonus on the rolls of the factory during the year 1970-71 at the statutory rate of 4 %.

The workmen served demand notice on the management in the year 1975 and the management paid bonus for the years 1971-72, 1972-73, 1973-74 and all the workmen received their bonus without any objection or raising any dispute etc. but raised the dispute for bonus only in 1975, i.e. after a long time. The management argued that the workmen received their bonus for the years 1971-72, 1972-73, and 1973-74 without any objection or dispute as admitted by Shri Uttam Chand WW 1, therefore, principle of waiver and estoppel are applicable in this case and the workmen are estopped from raising the dispute for payment of bonus. They have not raised this dispute for a long time, therefore, they deemed to have relinquished their rights for the bonus. In order to prove their contention Management put reliance on the statement of Shri Uttam Chand WW 1 who has admitted that the bonus was received by all the workmen without any objection or dispute whatsoever. Similarly Shri C.R. Kothari MW 4 has stated in his statement that bonus was received by the workmen without any dispute and there is no justification on the side of the workmen under what circumstance the bonus was received by the workmen. Hence the workmen are estopped by their own act. They could not raise the demands for bonus, but I do not agree with this contention in toto as the principles of estoppel is not totally applicable under the Industrial Disputes Act, 1947 but the conduct of the parties has to be seen. Since, there is no explanation about receiving of bonus for the years 1971-72, 1972-73 and 1973-74 and remaining silent for years together goes to show that workmen were satisfied with the paid bonus. On this connection reliance was made by the representative of workmen on an authority in LLJ 1965 Vol. II Page 32 wherein it is stated that there can not be any estoppel against the statute. This proposition of law can not be denied. I feel that peace harmony and love was going in the industry since its inception i.e. from 1970 upto 1975 when the element of love few away from the ventilation and the trade union crept in from the back doors and therefore this be lated and after thought claim before this court. This claim seems to be an of shoot of all this. Any way keeping in view moral and social justice, I have already held above that bonus should be paid to the workmen for the year 1970-71 also. Hence this issues is decided accordingly.

Issue Nos. 6 and 7—

These issues are inter connected and have been argued jointly by the representative of the workmen and replied of the representative of the management. So I take up them together.

These issues are on Grades, scales of Pay and D.A. These issues are present in the demand notice and claim statement which had been stressed upon strongly by the learned representative of the workmen, with the same force the representative of the management has controverted the contention of the workmen. The workmen have

demanded Grades, Pay scales and D.A. as detailed in the demand notice as well as claim statement. The management pleaded in their written statement that the workmen are being paid much more than the minimum wages fixed by Haryana Government and they are even higher than the fair wages. The management stressed that the workmen are being paid between Rs. 350 to 500 P.M. which is more than sufficient to meet their daily requirements. They are also given incentive wages which is over and above the minimum wages paid to the workmen. The workmen rebutted the contention of management in the replication. This demand has not been proved by oral evidence by the workmen W.W. 1, Shri Uttam Chand has solely stated that the workmen are not paid wages as per Grades and scales of pay. The workmen has now here stated as to what Grades, scales of Pay and D.A. are being paid in similar Industries in the Region. From the side of workman 4 copies of some settlements have been filed which are hereby attested by the representative of the workmen himself. These documents have not been got proved by any of the parties to these settlements or even by the witness produced by the workmen. No reliance can therefore be given to these documents in absence of their being proved on the file.

The workmen miserably failed to establish that some Grades, pay scale or D.A. is being paid in the like Industries in the Region. Shri Uttam Chand, W.W. 1, has deposed that Remington Rand a Company which Mfg. typewriting machine employ about 100—200 workmen. This industry is certainly not a like Industry as that of respondent because the respondent industry only, Mfg. compartments of fan, i.e. blades and not fans completely whereas M/s. Remington Rand manufacture complete type machine. Nor this fact has been brought on the file that capital invested in both the companies are almost similar. The other witness W.W. 2, has frankly expressed his ignorance about his knowledge of the nature of like Industry in the Region.

Shri Uttam Chand, W.W. 1, has admitted in his statement that M/s. Khanna Industry and Ajay Enterprise are situated in neighbour of respondent company and they manufacture fan components like respondent industry. He has also admitted the similarity in the number of workers in these factories with the number of employees working in the respondent company.

The management has produced Shri C.R. Kothari, S.P. Parmar, B.L. Gupta and A.L. Saraf in their defence. They have all corroborated the contention of the management respondent being, some how or the other connected with the respondent management or industry like that of respondent industry. The management has produced, exhibit M-1 to M-96 and M-3/16, M-3/18 in support of their contention which have been duly corroborated by oral evidence of C.R. Kothari and S.P. Parmar appearing as management witnesses. They have not been put even a single suggestion by the worker side about the Grades, Pay scales and D.A. and also about nature of Industry in the Region. I fail to understand why the evidence adduced by the management on these issues should not be believed. The workmen representative have cited the following Rulings :—

LLJ-1963-I, Page 108, LLJ. 1967, Vol. II Page 55.

1961 LLJ, Vol-I, Page 227, LLJ 1969, Vol. I Page 714, LLJ 1967 Vol I-114.

LLJ-1961, Vol. I, Page-339, LLJ 1969 Vol. I, Page 713,

LLJ 1972, Vol. I, Page 244, LLJ. 1967 Vol. I, Page 114.

I have gone through the rulings thoroughly and all these rulings are certainly very clear but they all mentions about the principles of granting grades, scales of pay and D.A. for ascertaining D.A. and pay scales issues etc. in like industry in the Region, or lower of the Tribunals.

I fully agree with the principles framed by their lordships in these authorities but here the question is not of principles to ascertain the D.A., grades and pay scales, rather the question is whether such benefits are allowed to these workmen of the respondent industry at present.

In absence of any evidence on records from the side of workmen, I am of the view that grades, pay scales and D.A. being paid to the workmen of the respondent may be in consolidated form is quite proper I further feel that annual increment is a right of a workman and he should not be denied the same. So it would be proper and quite justified if each workmen is given annual increments at the minimum rate of Rs 15 per year if they have not been paid increments minimum to the tune of Rs 15 in all the years i.e. 1971-72, 1972-73, 1973-74. Hence I decide this issue accordingly.

Issue No. 9—

This issue relates to the provision of residential accommodation for the workmen or payment of H.R.A. in lieu thereof at the rate of Rs. 50 P.M. This issue is almost co-related and connected with the proceeding Issues Nos. 6 and 7. This issue is almost lacking direct evidence and corroboration from the side of workmen. Merely asking for a relief mentioned in the claim statement does not hold good unless it is provided by evidence. Only 4 settlements which have been discussed by me in details in foregoing para of Issue No. 6 and 7, no weight can be given to such documents. This issue is, therefore, decided against the workmen and in favour of the management.

Issue No. 10.—This issue relates to the provisions of uniforms to workmen. The representative of the workmen stressed that the clothes of workmen are spoiled by doing their duties whereas this connection has been opposed by the management. He has during the course of arguments pointed out that the process of the factory is all automatic and the question of clothes being spoiled at all does not arise as per statement of Shri S.P. Parmar MW. 4. Secondly the necessary appurtenances and other gadgets required to have the wearing clothes of the workmen are duly provided in the factory. Shri Uday Chand MW 1 in his statement has also agreed that the clothes of workmen who work in the painting department can get spoiled. No other evidence whatsoever of any kind is forthcoming from the side of the workmen. Uniforms have been demanded by the workmen, solitary on the basis of their clothes being spoiled while working in the factory. I feel that only those workmen, who perform the duties in the paint shop, painting shop and machine shop should be provided necessary appurtenances. So that their clothes do not get stained and spoiled.

In view of the above, I award that the workmen should be paid bonus for the year 1970-71 at the statutory rate to all those workers who were on the rolls during that period. I further award that annual increment at the minimum rate of Rs 15 per annum be paid for the years 1971-72, 1972-73 and 1973-74 to all those workmen who have not been paid any increment or have been paid less than that.

Hence I award the award accordingly. No order as to costs.

Dated the 2nd May, 1980.

I. P. CHAUDHARY,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. LC/FBD/80/777, the 2nd May, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

I. P. CHAUDHARY,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 30th June, 1980

No. 11(112)-80-3Lab/8298.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Porrits and Spencer (Asia) Ltd., 113/114, Sector-24, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Reference No. 559 of 1978

between

SHRI MEHBOOB KHAN, WORKMAN AND THE MANAGEMENT OF M/S PORRITS AND
SPENCER (ASIA) LTD., 113/114, SECTOR-24, FARIDABAD

Present.—Shri Jitendra Sharma for the workman.

Shri R. C. Sharma for the management.

AWARD

1. By order No. ID/52324, dated 23rd November, 1978, the Governor of Haryana referred the following dispute between the management of M/s Porrits and Spencer (Asia) Ltd., 113/114, Sector-24, Faridabad and its workman Shri Mehboob Khan, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Mehboob Khan was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 4th June, 1979:—

- (1) Whether Shri Mehboob Khan is a workman as per I. D. Act ?
- (2) Whether the termination of services of the workman was justified and in order ?
- (3) Relief.

And the case was fixed for the evidence of the workman. The workman examined himself as WW-1 and closed his case. Then the case was fixed for the evidence of the management. The management examined Shri Y.N. Mallá as MW-1, Shri Mohan Lal as MW-2, Shri Mehar Chand as MW-3, Shri Gurbachan Singh as MW-4 and Shri N.K. Narula as MW-5 and closed their case. Then the case was fixed for arguments. Arguments were heard. I now give my findings issueswise :—

Issue No. 1.—It is a common case of the parties that Shri Mehboob Khan was appointed in the first instance as a Felter and Picker. Later on he was redesignated as a Foreman.

3. The management produced Ex.-M-A/14 the appointment letter of Shri Mehboob Khan dated 16th July, 1970 appointing him as a Felter and Picker from 1st July, 1970 at a consolidated salary of Rs. 501 per mensem Letter Ex. M-A/13 dated 31st January, 1975 was issued to the workman redesignating him as a Foreman in place of Jobber with effect from 1st January, 1975 with an increment of Rs 40. In this letter it is expressly stated that he will keep on performing the same duties which he was performing at present. Three other duties were also added which are as under :—

- (1) You will be responsible for the production in your department, qualitatively and quantitatively and will further improve the same.
- (2) You will be responsible regarding discipline of the workers in your department and will ensure smooth work thereof.
- (3) You will carry out all the instructions and orders given to you by your superiors including Shift Officers and will also abide by rules and regulations of the company applicable to you now or in future.

4. Letter Exhibit M-A/1 dated 8th September, 1977 was issued to Shri Mehboob Khan for transferring him as a Foreman of the Pre-Processing (Finishing) Inspection/Quality control section with immediate effect. In this letter his duties were described as under :—

- (1) To arrange inspection, checking and rectification of damage in all types of felts before picking and mending, after felting and before needling and finally before sending to finishing, for defects and broken needles.
- (2) In case of major defects you should report the same immediately to the senior concerned person so that defects are not repeated in the following felts.
- (3) You will be responsible regarding general working and discipline of workers in your section and will ensure smooth work thereof.
- (4) You will carry out all the instructions and orders given to you by your superiors and will also abide by rules and regulations of the Company applicable to you now or in future.
- (5) For carrying out the above jobs effectively and efficiently you will be provided with the adequate number of workman as per assessment by the management.

5. Services of Shri Mehboob Khan were terminated,—*widely* letter Exhibit M-A/2 dated 14th January, 1978 and he was also offered one month's pay in lieu of notice period.

6. Shri Mehboob Khan in his statement as WW-1 stated that at the time of termination of his services he was working in the Processing/Finishing and Quality Control Department. No duty chart was given to him by the management. In this department there were either two persons working with him. They were Shri Anwar Ahmed and Shri Mohan Lal. He described his duty that felts were received for checking. They were put on the rollers in front of tubes. The damage in the felts was marked by all the three of them. Thereafter the felts were unloaded from the rollers and taken on a trolley to weighing machine. The weight of felts varied from 200 Kg. to 400 Kg. He further stated that all the three of them used to do whole of this work together. He stated that he was not authorised to recommend or sanction leave or increment or take any disciplinary action against the workman in his department. He was only to sign gate passes as a forwarding authority. He stated that a union of workers was formed in the year 1972 and he was its founder/president. Since 1973 he was a member of the union. He also stated that there was a strike

in the factory but he remained on his duty inside the factory along with some other workers. In cross-examination he stated that there was a department named as Carding and Spinning. There was Manager, Foreman and other workmen in the department. Similarly there was department known as felting, finishing and packing. He admitted that persons belonging to Quality Control Department could go to other department for checking up the quality and to see that no damage is appearing in the manufacture or in the quality. Mr. Malla was the Incharge of the Quality Control department while Shri Mehtani was the Supervisor of the whole of the factory. There was no other Supervisor for the Quality Control Department. He further stated that he knew working of his duty only. Although he had been to other departments for checking the quality or damage but he did not know the working of other departments. He told that Shri Anwar Ahmed and Mohan of other departments. He told that Shri Anwar Ahmed and Mohan Lal were junior to him. He was getting Rs 812 including all allowances per month. He admitted his writing and signatures on a number of documents produced by the management. He also admitted that he used to attend union meetings during the period of strike. But he denied that he attended any of the meetings of Supervisors and high officers for the factory regarding problems of strike. He denied a suggestion of the management that the trolley loaded with felts was only driven by other two workmen of his department.

7. MW 1 Shri Y.N. Malla the Production Manager of the management stated that there were may departments in the factory. Quality Control department was under his charge. Shri Mehboob Khan was a Foreman in his department and there were 2-3 other workers. He also stated that loading, unloading and carriage of goods was done only by other workers. He further stated that during the strike Shri Mehboob Khan used to attend meetings of officers and he leaked the information to the strikers. In cross-examination he stated that Quality Control department came into existence in June, 1977. He admitted that there was no Foreman in the department after termination of services of Shri Mehboob Khan. Regarding the meeting he stated that there was no record of the meeting, nor any notice for such meetings were issued. He also stated that even the minutes of the meetings were not recorded. He admitted that no explanation of Shri Mehboob Khan was ever sought from him regarding the doubts of the management, nor anything was given to him in writing. He admitted that there were different designations in different departments and the designations varied with the nature of work and matter of responsibility. He stated in cross-examination that Shri Mehboob Khan was authorised to issue charge-sheet, ask for explanation and take disciplinary action but this authority he stated was on his oral instructions. He could not cite any instance where the workman has exercised such authority. He stated that the workman had a right to sanction leave, although Shri Mehtani and he sanctioned leave of the workmen. He could not give any circumstance where the Foreman could sanction leave. He stated that a person belonging to Quality Control Department could go to other departments and could check the quality of felts and fabrication etc. That person could go for this purpose only and for nothing else. He further admitted that that person could not interfere in any other matter than this checking. MW 2 Shri Mohan Lal stated that he worked under Shri Mehboob Khan who was a Foreman. He stated that he used to give his leave application and advance application to Shri Mehboob Khan. He further stated Shri Mehboob Khan could go to other departments for checking the quality of felts in process. In cross-examination he stated the process, checking of felts. He stated that felts were put on the rollers by hand. He also stated that the felts were put on roller by the workman of his department only. He told the weight of felts was from 20 kg. to two quintals or more. He denied the suggestion that the felts were put on the trolley by Shri Mehboob Khan also. He told that he was getting Rs . 3772 per mensem while Shri Anwar Ahmed was getting more than Rs. 500 per mensem. MW 3 corroborated the statement of MW 2. In cross-examination he stated that he never worked in the quality control department, and that after termination of Shri Mehboob Khan one Shri Ram Saran was appointed as Foreman. MW 4 Shri Gurbachan Singh produced attendance sheets Ex. M 22 and M 23 which bear the signature of Shri Mehboob Khan. In cross examination he stated that Foreman and Shop Floor Clerk sign one attendance register. There was a separate register for a watch and ward staff and still a separate register for the attendance of the peon. Shri Mehboob Khan was designated as Foreman. MW 5 stated that Shri Mehboob Khan was a Foreman and he instigated some workers to go on strike and asked some others not to do any work. He admitted in cross-examination that the workers instigated by Shri Mehboob Khan were still in the employment of the management.

8. The representative for the management has laid great stress that Shri Mehboob Khan was not a workman but was a Supervisor. He cited a number of rulings on this point. He cited 1970 II LLJ page 590 on section 2(s), in which it was held that real test was the substantial work performed by the concerned employee. A number of categories of the employees held to be 'workman' or otherwise discussed in the ruling applying the above test. He cited 1975 Lab. I.C. page 94, in which it is held as under:—

The word "supervise" and its derivations are not words of precise import. They take their colour from the context in which they are used in particular statutes.

Broadly stated where there is a power of assigning duties and distribution of work, there is supervision and the person doing these duties would be a supervisor. If a person is mainly doing supervisory work but incidentally or for a part of the time does also some clerical work as well, he would be held to be employed in a supervisory capacity. Conversely if his main work is of a clerical nature, mere fact that he also carries out some supervisory duties incidentally or for a part of the time, he could not be called a supervisor.

The determining factor in deciding whether a person is a workman or a supervisor is the principal or main work he is required to do in his employment. The principal nature of his work can be determined from the letter of appointment, the nature of his duties and the other attending circumstances.

9. The representative for the workman argued that report and allocation of work etc. or the signatures in the register or attendance sheet did not matter much. It was the nature of duties performed by an employee were seen while deciding whether he was a workman or not. He cited 1975 II LJ page 300 in which it was held as under:—

Supervision may be in relation to the work or in relation to persons. The word "supervisory" is not used in S.2 (s) in relation to the supervision of an automatic plant. Machines which run automatically on power, do not have to be run by human energy. Their running has to be watched. The person who attends to such machine may do either technical work or manual work within the meaning of S.2(s). But he does not do supervisory work merely because he looks after the machines. The essence of supervisory nature of work is the supervision by one person over the work of others. Supervision contemplates direction and control. Ordinary supervision is not "supervisory" within the meaning of S.2 (s).

In the result it was held in the instant case that (a) the factual aspect of the finding of the Labour Court was based on sound evidence and good reasons; even if it was jurisdictional, it was correct and not capable of being challenged in a writ petition and (b) the legal aspect of the finding was also correct in the light of various decisions.

He cited 1969 II LLJ in which it was held as under:—

An employee doing mainly clerical work and occasionally discharging some duties of a supervisory nature, held, "workman" as defined in S.2(s) of the Act.

He also cited 1961 I LLJ page 18.

10. After going through the evidence and rulings, I find that the case of Shri Mehboob Khan was of transfer and redesignation. His main duties remained unchanged. The management failed to prove the duty chart mentioned in the pleadings and statement of MW—1. It does not matter much as to whether the workman is getting a salary or wages above or below Rs. 500. In the instant case other two workmen of the department were getting Rs. 377 and more than Rs. 500. Shri Mehboob Khan being senior was getting Rs. 812 p.m. Therefore, I hold that Shri Mehboob Khan was a workman as defined in section 2 (s) of the Industrial Disputes Act. This issue is decided in favour of the workman.

Issue No. 2.—On this issue the evidence of the management is that the workman concerned although was not on strike but he was attending meetings of the Union. The representative for the management cited 1975 I LJ page 262 in which it was held as under:—

An employer, who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion should not be a mere whim or fancy. It should be bona fide or reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly, with due care and prudence. If the exercise of such power is challenged on the ground of being colourable, or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially.

He cited 1973 Lab. I.C. page 1119 in which it is held as under:—

The employer loses confidence in the workman when the latter avails of special leave without wages etc. on false representation and fails to resume his duties when he is intimated that his sanctioned leave has been cancelled and he is ordered to join immediately.

He also cited 1972 I LLJ page 501. This is a case of loss of confidence due to grave suspicion regarding misbehaviour with air hostesses employed by the management. This case is not applicable to the present case. Lastly he cited 1971 II LLJ page 615. The case of termination of services of Durwan on the ground of loss of confidence of the employer in which it was held that payment of compensation for termination of services on account of loss of confidence will in the circumstances meet the ends of justice but this is a theft case in which the workman being Durwan did not help the other workmen in assisting the other workmen who had called him to help as the thief had been caught by him. On behalf of the workman on this point 1975 I LJ page 262 was cited in which it was held as under:—

Held, the law is simply this: The Tribunal has power and, indeed, the duty to X-Ray the order and discover its true nature, if the object and effect, the attendant circumstances and the ulterior purpose is to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up its inability to establish by an enquiry, illegitimately but ingeniously passes an innocent looking order of termination simpliciter, such action is bad and is liable to be

set aside. Loss of confidence is no new armour for the management; otherwise security of tenure, ensured by the new Industrial jurisprudence and authenticated by a ~~catena of cases~~ of this can be subverted by this new formula. Loss of confidence in the law will be the consequence of the loss of confidence doctrine. Loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The Court is concerned with the latter and not the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or a responsible post being misused or a sensitive or a strategic position being abused, it may be a high risk to keep the employee, once suspicion has started and a disciplinary enquiry cannot be forced on the matter. There, a termination simpliciter may be bona fide, not colorable, and loss of confidence may be evincatory of good faith of the employer.

11. It is admitted fact that Shri Mehboob Khan the concerned workman was a founder president of the union and he remained its member throughout. The management has failed to produce any minutes of the meetings or special information leaked out to the strikers. I find him as a loyal workman who did not participate in the strike. Trade union activities is a legitimate right of a workman which cannot be denied to him and the management has not proved anything where the workman divulged any trade secret or information concerning business of the management. Doubt is ill founded. The workman was not holding any post of confidence as described in the above rulings. In the circumstances this issue is decided against the management.

Issue No. 3.—The workman is entitled to reinstatement with continuity of service and full back wages.

12. While answering the reference, I give my award that the termination of services of the workman Shri Mehboob Khan was neither justified, nor in order. The workman Shri Mehboob Khan is entitled to reinstatement with continuity of service and full back wages. I order accordingly.

The 14th June, 1980

M.C. BHARDWAJ,
Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

No. 574, dated the 20th June, 1980

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

The 14th June, 1980

M.C. BHARDWAJ,
Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

H. L. GUGNANI, Secy.